IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 386 OF 2000

Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd., having its Registered Office at B-1, MIDC, Gokul-Shirgaon, Kolhapur, Maharashtra State. .. Petitioner

Versus

1. Mayur Co-operative Milk Union Ltd., Shahu Market Yard, Kolhapur.

2. Deputy Secretary to the Government of India, Dairy Development Department of Animal Husbandry & Dairying, Ministry of Agriculture, Krishi Bhavan, New Delhi.

3. Controller & Joint Secretary to the Government of India, Dairy Development Department of Animal Husbandry & Dairying, Ministry of Agriculture, Krishi Bhavan, New Delhi.

4. National Dairy Development Board, Safdarjun Enclave, New Delhi 110 029.

5. Maharashtra Rajya Sahakari Dudh Mahasangh Maryadit, Goregaon, Mumbai.

6. Secretary, Department of Animal Husbandry and Dairying, Ministry of Agriculture, Government of India, Krishi Bhavan, New Delhi - 110 001.

7. The Union of India. .. Respondents

Mr. Amit B. Borkar for the Petitioner.

Mr. A.A. Kumbhakoni for Respondent No.1.

Mr.K.B. Rao for Respondent Nos.2, 3, 6 and 7 (absent).

Mr. R.M. Patne, A.G.P. for Respondent No.5.

Respondent No.4 is served.

WITH

WRIT PETITION NO. 2951 OF 2000

Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd., having its Registered Office at B-1, MIDC, Gokul-Shirgaon, Kolhapur, Maharashtra State. .. Petitioner

Versus

1. Mayur Co-operative Milk Union Ltd., Shahu Market Yard, Kolhapur.

2. The Hon'ble Minister of Department of Dairy Development, Government of Maharashtra, Mantralaya, Mumbai - 400 032.

3. State of Maharashtra Through the Secretary, Dairy Development Department, Mantralaya, Mumbai - 400 032.

4. Shree Warna Sahakari Dudh Utpadak Prakriya Sangh Ltd., a Society duly registered under the Maharasthra Co-operative Societies Act, 1960 having its office at Tatya Saheb Korenagar, Post Warna Nagar, Dist. Kolhapur. .. Respondents

Mr. Amit B. Borkar for the Petitioner.

Mr. A.A. Kumbhakoni for Respondent No.1.

Mr. R.M. Patne, A.G.P. for Respondents Nos.2 and 3.

Mr. S.S. Pakale for Respondent No.4.

AND

WRIT PETITION NO. 1643 OF 2001

Shree Warna Sahakari Dudh Utpadak)

Prakriya Sangh Ltd.,)
a Society duly registered under the)
Maharasthra Co-operative Societies)
Act, 1960 having its office at)
Tatya Saheb Korenagar, Post Warna)
Nagar, Dist. Kolhapur.) .. Petitioners

Versus

1. Mayur Co-operative Milk Union Ltd.,)
Shahu Market Yard, Kolhapur.)

2. The Hon'ble Minister of Department)
of Dairy Development, Government of)
Maharashtra, Mantralaya,)
Mumbai - 400 032.)

3. State of Maharashtra)
Through the Secretary,)
Dairy Development Department,)
Mantralaya, Mumbai - 400 032.)

4. Kolhapur Zilla Sahakari Dudh)
Utpadak Sangh Ltd., having its)
Registered Office at B-1, MIDC,)
Gokul-Shirgaon, Kolhapur,)
Maharashtra State.) .. Respondents

Mr. S.S. Pakale for the Petitioner.

Mr. A.A. Kumbhakoni for Respondent No.1.

Mr. R.M. Patne, A.G.P. for Respondents Nos.2 and 3.

Mr. Amit B. Borkar for Respondent No.4.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE : 7TH JUNE 2005

ORAL JUDGMENT : (Per H.L. Gokhale J.)

1. The first petition, i.e. Writ Petition No.386 of 2000, is filed by a federal milk procuring and

processing society to challenge certain orders passed by authorities designated under the Milk ad Milk Products Order, 1992 (MMPO) in favour of Respondent No.1, which is another milk procuring and processing society. The Petitioner Society is registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the State Act") whereas Respondent No.1 is a society registered under the Multi State Co-operative Societies Act, 1984 (hereinafter referred to as "the Central Act"). The Petitioner Society in this petition is aggrieved by the functioning of the 1st Respondent - Milk Co-operative Union, which, according to it, affects its economic viability.

2. As far as this petition is concerned, the case of the Petitioner is that it is registered on 16th March 1963. It has been allotted the operating area of all the 12 Talukas of Kolhapur District of Maharashtra excluding 41 villages of Panhala and Hatkanangle Talukas. The Respondent No.1 Society has been granted a registration under the Central Act on 22nd January 1993 which is for 5 Talukas of Kolhapur District, namely Shirol, Panhala, Karveer, Radhanagari and Bhudar-gad and 3 Talukas of adjoining Belgaum District of Karnataka State, namely Chikkodi, Raibag and Athani. The Petitioner in the third petition, i.e. Warna Sahakari

Dudh Utpadak Prakriya Sangh, operates in the above 41 villages. The Petitioner's case is that no third competitor should be entertained to enter into these areas. The Petitioner supplies its milk under the brand name "Gokul", Respondent No.1 under the name "Mayur" and the Warna Sangh under the name "Warna". The case of the Kolhapur Society (Gokul) is that it took loan from NDDB for various of its projects and Government of Maharashtra gave an undertaking that no new society will be permitted. This was essentially with a view to see to it that the economic viability of the society is not affected which is the pre-requisite under section 4 of the State Act.

3. The Respondent No.1 - Mayur Society, after its registration, initially approached the Registering Authority under the Central Act for permission to start the milk collection. The Authority of the Central Government directed the Mayur Society to approach the Authority of the State Government. Such orders were passed earlier first on 6th April 1995 and then on 26th May 1995. It is the case of the Petitioner Society that Mayur Society did not challenge these orders.

4. Before we deal with the orders impugned in the first petition, it is material to note that the

governing rules in this field are notified under the Milk and Milk Products Order, 1992 (for short "MMPO") issued under the Essential Commodities Act. Clause 8 of this MMPO specifies the terms and conditions which the Registering Authority shall have regard to. These conditions includes the policy of preferential treatment to the cooperative sector amongst others. It is submitted on behalf of the Petitioner that when one speaks of cooperative sector, the pattern of development in Anand District of Gujarat is to be kept in mind, namely that unnecessary competition is not to be encouraged and only cooperative societies are to be preferred.

5. In spite of the above orders of the Central Registrar asking the Mayur Society to approach the officers of the State Government, it filed another application dated 11th March 1995 before the Central Registrar. Initially the Central Registrar passed an order on their application that the same could not be granted. The application sought permission to set up a milk processing plant. The Registering Authority took the view that since the processing capacity already created in the proposed milk shed area far exceeded the marketable surplus, there was no scope for creating additional processing capacity. The Respondent No.1 -

Mayur Society went in appeal. This is as per the mechanism created under clause 18 of the above referred MMPO. The First Appellate Authority heard all the parties concerned including the Petitioner. It formed an opinion that it was not possible to arrive at the exact figures of milk production in the district on the basis of the information given by the rival parties. It therefore visited the area, collected data on its own and thereafter came to the conclusion that the available milk supply in the area was in the range of 11,00,000 litres per day. It therefore held that the application of the Respondent No.1 - Mayur Society to start collection in its area of operation ought to be entertained. It therefore granted the same and also the application to set up the processing plant. It is material to note that after this order passed on 6th October 1997, the Respondent No.1 - Mayur Society has set up its processing plant and it has been functioning since then.

6. The Petitioner in the first petition filed appeal against this first Appellate Order under clause 22 of the MMPO. That came to be dismissed by the Second Appellate Authority by its order dated 7th September 1999. The Petitioner Society (Gokul) is aggrieved by these orders and therefore has filed this first

petition.

7. Mr.Borkar, learned counsel for the Petitioner, submitted that when the order was passed by the Registering Officer on 6th April 1995 directing the Respondent No.1 - Mayur Society to approach the State Government, that was not challenged by Mayur Society and it became final. The second submission of Mr.Borkar was that the First Appellate Authority had no business to go for site inspection and collect data under clause 18 of MMPO. The third submission of Mr.Borkar was that the Appellate Authority should have considered the marketable surplus which was only 7,00,000 litres per day and not the collection of 11,00,000 litres per day.

8. Mr.Kumbhakoni, learned counsel for Respondent No.1 - Mayur Society, on the other hand, pointed out that as far as the orders passed by the Registering Officer directing Mayur Society to approach the State Government are concerned, those orders were erroneous and the First Appellate Authority has itself recorded that they were wrong. He submitted that when the registration of Respondent No.1 - Mayur Society was under the Central Act, obviously the Central Authority had the jurisdiction. He submitted that these were essentially administrative orders though there was a

quasi-judicial element therein. This being so, it will be erroneous to insist on such technicalities that such earlier administrative orders ought to have been separately challenged. As far as site inspection is concerned, he submitted that obviously there was a dispute with respect to the figures given by both the parties. In a matter like this, that was bound to be so. It was in the interest of fairness and justice that the officer concerned visited the site and collected the data. The data is supported by the present situation also. He pointed out that in fact now two more societies function independently of Petitioner Society (Gokul) and Warna Union in this district, namely Hiranyakeshi Ghatprabha Society and Mahalaxmi Sahakari Dudh Utpadak Sangh. Their registration was under the Central Act and was not challenged by this Petitioner Society. He pointed out that as per the balance sheet of the respective societies, the milk collection of the Petitioner Society (Gokul) for the year 2003 was in the range of 5,21,000 litres per day. As far as Warna Society is concerned, their collection in the same year was 2,51,000 litres per day and that of Mayur Society was 1,02,000 litres per day. This information is placed on record through an affidavit. Thus, all of them had sufficient milk collection and this justifies the approach of the First Appellate Authority.

9. We have considered the submissions of the counsel for both the parties. What is material to note is that in all such matters, it is the economic soundness of the Society concerned which is to be seen. Section 4 of the State Act provides that when a society is to be registered, what is to be seen is that it should be working for the economic interests or general welfare of its members or of the public, and it is not to be registered if it is likely to be economically unsound or its registration is likely to have an adverse effect on development of the cooperative movement. That is at best the argument of the Petitioner Society. From the statistics, which is noted above from the official records of the respective societies, it is clearly seen that all the three societies are sufficiently strong economically and registration of one cannot be said to have an adverse effect on the other. The First Appellate Authority under the Central Act was, therefore, quite right in coming to the conclusion that the Respondent No.1 - Mayur Society should be permitted to have its own processing plant and should be permitted to collect milk from its members. It had placed certain conditions while passing this order. These conditions required that the Respondent No.1 - Mayur Society will collect milk from its members only from 5 Talukas of

Kolhapur District and 3 Talukas of Belgaum District and that the objecting Gokul and Warna Union will continue to operate in their area. The Mayur Society was restrained from collecting milk from any source which is registered with Gokul or Warna Union.

10. Similarly, as far as the objection with respect to not challenging the initial administrative orders as also objection to visit of the First Appellate Authority to the site and collecting the data is concerned, in our view, these objections cannot be sustained. These are essentially administrative functions though with quasi-judicial elements. All such acts and steps should be permitted to such Authorities which are essential for arriving at the correct decision which should be arrived at in a fair manner. Such Authorities cannot be restricted by any such technical restriction of bar of earlier decisions. That will be particularly so when the earlier decision is purely administrative. A visit to the site and data collection is almost in the nature of site inspection and making notes and seeking relevant information from contesting parties which is permitted and done by judicial authorities. In the circumstances, we do not find any error either on the part of the First or the Second Appellate Authority in passing the impugned orders. Petition No. 386 of 2000 will stand

dismissed though without any order as to costs.

Writ Petition Nos.2951 of 2000 and 1643 of 2001

11. Writ Petition No.2951 of 2000 and Writ Petition No.1643 of 2001 are petitions filed by Kolhapur Milk Federation (Gokul) and Warna Union respectively. Here what is challenged is the order passed by the Cooperation Minister of the State of Maharashtra enlarging the area of operation of the Mayur Society. This order dated 25th April 2000 passed by the Minister permits Mayur Society to collect milk from its supposed members numbering 448 out of other 7 Talukas of District Kolhapur. Mr.Borkar, learned counsel for the Petitioner, submits that the Minister had no jurisdiction to extend the area of operation of Mayur Society. Mayur Society is a Multi State Cooperative Society registered under the Central Act. The said Minister is functioning under the State Act and he has no jurisdiction to do anything of the sort with respect to a society registered under the Central Act. Mr.Borkar points out that as far as the registration of a Multi State Society (which will include expansion of the area of operation), is concerned, that would be governed under clause 5(5) of the MMPO. He relies upon clause 10(1) of MMPO. This clause reads as follows:-

> "10. Production or handling of milk or mil product:- (1) On or after the commencement of this order, no person to whom registration certificate has been issued under this order shall handle, produce or deal with any item of milk or milk product in excess of the capacity specified in the registration certificate or collect milk from outside the milkshed area specified in the registration certificate unless he obtains the previous permission of the Controller to do so." (underlining supplied)

Mr.Borkar submits that this jurisdiction with respect to the Multi State Societies is with the Controller / Central Registrar and not the State Minister.

12. Mr.Kumbhakoni, learned counsel for Respondent No.1, defended the order to the best of his ability, but fairly accepted that the jurisdiction under the two Acts was different. He, however, submitted that out of these 448 village societies, which were claimed by Mayur Society, 337 were in the 7 Talukas of Kolhapur District which were already allotted to it. His submission is that Mayur Society should be permitted to collect milk from these member societies and they should be permitted

to be registered and to join Mayur Society.

13. We have noted the submissions of both the counsel. It is very clear that inasmuch Respondent No.1 - Mayur Society is registered under the Central Act, the Minister functioning under the State Act had no jurisdiction to pass the kind of order that he has passed. Inasmuch as he did not have any jurisdiction, he could not have made any such comment either with respect to 448 societies or 337 of them being in the 7 Talukas. This order dated 25th April 2000 will, therefore, have to be set aside. Writ Petition No.2591 of 2000 and Writ Petition No.1643 of 2001 therefore stand allowed. Rule is made absolute as above. There will be no order as to costs in all these petitions.

14. Although we are allowing these two petitions, we clarify that if Mayur Society so intends it will be open to it to approach the Authorities under the Central Act for registration of any such primary society which it claims to be its member and to collect milk from such society. The Central Authority will give notice to both the societies, i.e. Kolhapur Society (Gokul) and Warna Union when any such application is received, hear them and decide the same in accordance with law.

15. All the three petitions stand disposed of.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)